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10/785,434	02/24/2004	David Arthur Welch	WELCH 4	8500
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DUFT BORNSEN & FISHMAN, LLP			EXAMINER	
1526 SPRUCE STREET			KEEHN, RICHARD G	
SUITE 302				
BOULDER, CO 80302			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/785,434	Applicant(s) WELCH, DAVID ARTHUR
	Examiner RICHARD G. KEEHN	Art Unit 4121

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 24 February 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 02/24/2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/0256/06)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

DETAILED ACTION

Claims 1-20 have been examined and are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claims 1, 2, 7-10, 11, 12 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,370,572 B1 (Lindskog et al.), and further in view of non-patent literature from City University's School Counselor Program (City University).

As to Claims 1 and 11, Lindskog et al. teach a telecommunication system and method configured to provide distributed system monitoring, the telecommunication system comprising:

a control system (Lindskog et al. – Column 3, lines 9-11 recite the control system, which is composed of a plurality of control agents); and a plurality of peer communication devices, each communication device, responsive to handling telecommunications data, collects performance data and transfers the performance data to the control system (Lindskog et al. – Column 3, lines 11-13 recite the telecommunications peer devices known as performance agents, which communicate their performance data to the control agents, the collection of which comprise the control system).

Lindskog et al. do not teach, but City University teaches the control system, responsive to receipt of the performance data from the communication devices, processes the performance data from each of the communication devices to generate a performance file that indicates the performance of each of the communication devices, and transfers the performance file to each of the communication devices (City University – Page 2 under the heading "Assessment System" recites the generation of individual performance plan based on grades and an improvement plan, which are published to the candidates, the control system being the Assessment System and the communication devices being the candidates);

each communication device, responsive to receipt of the performance file, processes the performance file to compare its performance to the performance of the other peer communication devices (City University – Page 2 under the heading "Assessment System" recites the determination of those not meeting performance standards).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the control system, responsive to receipt of the performance data from the communication devices, processes the performance data from each of the communication devices to generate a performance file that indicates the performance of each of the communication devices, and transfers the performance file to each of the communication devices; each communication device, responsive to receipt of the performance file, processes the performance file to compare its performance to the performance of the other peer communication devices taught by City University, with a control system; and a plurality of peer communication devices, each communication device, responsive to handling telecommunications data, collects performance data and transfers the performance data to the control system taught by Lindskog et al.

One of ordinary skill in the art at the time the invention was made would have been motivated to improve any system's overall performance by providing a proven method of performance enhancement designed to improve the performance of a member of a system by comparing said member's individual performance against the group's, identifying deficiencies and developing an individual improvement plan, implementing said plan, then following up to identify that success is achieved, or further adjustments are necessary (City University, Page 2). This system of Plan-Do-Check-Action (PDCA), popularized in the 1980's, is well known as a proven Kaizen model for system improvement in business, engineering and academic settings.

As to Claims 2 and 12, the combination of Lindskog et al. and City University teaches the telecommunication system and method of claims 1 and 11 wherein each communication device processes the performance file to attempt to improve its performance (City University – Page 2 under the heading "Assessment System" recites the development of individual improvement plans).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 7 and 17, the combination of Lindskog et al. and City University teaches the telecommunication system and method of claims 1 and 11 wherein each communication device processes the performance file by comparing its performance data with performance data of the other peer communication devices (City University – Page 2 under the heading "Assessment System" recites the assessment of meeting performance standards, which is a comparison of individual performance against peer performance).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 8 and 18, the combination of Lindskog et al. and City University teaches the telecommunications system and method of claims 1 and 11, wherein: each communication device periodically transfers the performance data to the control system (Lindskog et al. – Column 3, lines 11-13 recites the performance agents transferring their performance data to the control agents).

As to Claims 9 and 19, the combination of Lindskog et al. and City University teaches the telecommunications system and method of claims 1 and 11 wherein the performance data includes a performance grade for each communication device (City University – Page 2 under the heading "Assessment System" recites grading criteria of candidate performance).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 10 and 20, the combination of Lindskog et al. and City University teaches the telecommunications system and method of claims 1 and 11 wherein the performance file includes a list of performance data for each of the plurality of peer communication devices (City University – Page 2 under the heading "Assessment System" recites student performance represented by a grade, broken down by individual to determine if an individual's performance standards are met).

The motivation and obviousness arguments are the same as in Claim 1.

2. Claims 3-6 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindskog et al. and non-patent literature from City University as applied to claims 1 and 11 above, and further in view of US 7,136,927 B2 (Traversat et al.).

As to Claims 3 and 13, the combination of Lindskog et al. and City University teaches the telecommunication system and method of claims 1 and 11.

The combination of Lindskog et al. and City University does not teach, but Traversat et al. teach wherein one of the communication devices monitors the one communication device to detect a fault (Traversat et al. – Column 70, lines 45-55 recite peer monitoring including the detection of peer failure).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine peer fault detection taught by Traversat et al., with a telecommunication system and method configured to provide distributed system monitoring taught by the combination of Lindskog et al. and City University.

One of ordinary skill in the art at the time the invention was made would have been motivated to respond to actions on the part of a peer to improve reliability, scalability and response time (Traversat et al. – Column 70, lines 45-55).

As to Claims 4 and 14, the combination of Lindskog et al., City University and Traversat et al. teaches the telecommunication system and method of claims 3 and 13 wherein the one communication device, responsive to detection of the fault, processes the performance file to identify at least one recovery action and performs the at least one recovery action (City University – Page 2 under the heading “Assessment System” recites the identification of individual improvement plans responsive to the determination that performance standards are not being met).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 5 and 15, the combination of Lindskog et al., City University and Traversat et al. teaches the telecommunications system and method of claims 4 and 14 wherein the one communication device determines if the fault is cured by the at least one recovery action, generates a report of the fault if the fault is not cured by the at least one recovery action, and transfers the report of the fault to the control system (City University – Page 2 under the heading “Assessment System” recites the use of the exit interview in which the candidate must report on whether the corrective action(s) in the individual improvement plan succeeded in solving the sub-standard performance identified prior).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 6 and 16, the combination of Lindskog et al., City University and Traversat et al. teaches the telecommunications system and method of claims 5 and 15 wherein the control system, responsive to receipt of the report of the fault, identifies at least one recovery action, and performs the at least recovery action on the one communication device (City University – Page 2 under the heading “Assessment System” recites the Field Supervisors determining and ordering execution of the individual’s improvement plan, which the individual must execute, and subsequent follow-up to determine the status of success or failure).

The motivation and obviousness arguments are the same as in Claim 1.

Conclusion

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. These include:

- US 2002/0123919 A1 – Customer-Oriented Telecommunications data Aggregation and Analysis Method and Object Oriented System
- US 7,120,689 B2 – Receiving Network Metrics Data from Disparate Devices and Displaying in a Host Format
- US 2005/0165854 A1 – System for Managing Job Performance and Status Reporting on a Computing Grid
- US 2005/0144274 A1 – Apparatus for monitoring the Performance of a Distributed System
- US 2005/0086300 A1 – Trust Mechanism for a Peer-to-Peer Network Computing Platform

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RICHARD G. KEEHN whose telephone number is (571)270-5007. The examiner can normally be reached on Monday through Thursday, 7:30am - 6:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Taghi Arani can be reached on 571-272-3787. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RGK

/Taghi T. Arani/
Supervisory Patent Examiner, Art Unit 4121
1/16/2007